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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-6736-2024 (O&M)
Date of Decision: 16.05.2024**

Tarsem Singh

..... Petitioner

Versus

Uttar Harayana Bijli Vitran Nigam Limited and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vijay Kumar Jindal, Senior Advocate assisted by
Mr. Ashutosh Kaushik, Advocate,
for the petitioner.

Mr. Samarth Sagar, Advocate,
for the respondents.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ especially in the nature of *mandamus* directing the respondents to accommodate/transfer and post the petitioner to some place/office which is nearby to his residence (i.e. Guhla, District Kaithal) considering the fact that the petitioner is 70% physically handicapped and his wife is suffering from 4th stage Lung Cancer (last stage) and is almost on her deathbed in the light of respondent's transfer policy and memo dated 22.06.2022 (Annexure P-16). Further, to issue a writ in the nature of *certiorari* for quashing the impugned order dated 07.07.2023 (Annexure P-3), order dated 22.08.2023 (Annexure P-7) and order dated 06.12.2023 (Annexure P-11) vide which the representation of the petitioner has been rejected in an illegal manner.



2. Mr. Vijay Kumar Jindal, learned Senior Counsel appearing for the petitioner assisted by Mr. Ashutosh Kaushik Advocate submitted that the petitioner is working as a Sub Divisional Officer in the respondent-Nigam and earlier for a number of times, he was transferred from various places but with the intervention of this Court in number of cases he was again posted to his native place in Guhla, District Kaithal primarily on the ground that he is 70% physically disabled and also his wife is suffering from last stage of Lung Cancer and is taking treatment from Rajiv Gandhi Hospital, Delhi. He further submitted that now the petitioner has again been transferred from Guhla, District Kaithal to Dhulkot, District Ambala vide order dated 07.07.2023 (Annexure P-3).

3. Learned Senior Counsel further submitted that when the petitioner had earlier filed a petition before this Court for challenging the aforesaid transfer order, a Co-ordinate Bench of this Court had disposed of the petition vide order dated 11.08.2023 (Annexure P-5) wherein direction was issued to the respondents to look into the representation and decide the same in accordance with law. In pursuance of the aforesaid order, the petitioner filed a detailed representation to the Managing Director, UHBVNL, Panchkula vide Annexure P-6 dated 16.08.2023, while giving the details that his native Village is Guhla, Kaithal and he has been transferred to Dhulkot, Ambala which is about 60 kms. away from his native village and there are two reasons given by him i.e. his 70% disability and last stage Lung Cancer of his wife. Thereafter, the respondent-Nigam passed the impugned order dated 22.08.2023 (Annexure P-7) whereby again the request of the petitioner for transfer was declined. Learned Senior Counsel further

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submitted that the reason for declining the request of the petitioner was that while he was posted at Guhla, Kaithal, one FIR dated 19.10.2022 under the Prevention of Corruption Act was registered against him and the allegation was that he had taken a bribe of Rs.2,00,000/- for the purpose of shifting of some electricity connections, but in the aforesaid FIR, the charges have now been framed and it is at the stage of trial. Another reason which has been given in the impugned order (Annexure P-7) was that the petitioner had to be posted far away so that he may not influence the witness. Learned Senior Counsel submitted that firstly, the mere pendency of the trial against the petitioner cannot draw a presumption that the petitioner was involved in the aforesaid offence because it is yet to be proved at the time of trial as to whether the petitioner was involved in the aforesaid case or not and secondly, transferring the petitioner 60 kms. away from his native place would not mean that the reason which has been given that he may influence the witnesses can be ascertained. He further submitted that the petitioner would not influence any of the witnesses in the trial but even otherwise also 60 kms. distance would not make any difference and therefore, the reasoning which has been given for posting the petitioner is not a cogent one. He also submitted that the petitioner has a house in Guhla District Kaithal and his wife being a patient of last stage of Lung Cancer has to be uprooted along with the petitioner in case he is transferred from Guhla, District Kaithal to Dhulkot, District Ambala and therefore, the reasoning which has been given in the impugned order (Annexure P-7) cannot be sustained. He submitted that even otherwise also the petitioner has now been posted at that place for 8 years and as per the Policy normally an employee



has to be transferred in case of long stay at a particular place but there is another Policy dated 22.06.2022 vide Annexure P-16 issued by the Nigam itself pertaining to the transfer of the officers upto the rank of Executive Engineers which include the petitioner because he is a Sub Division Officer (SDO) wherein it has been so provided that there can be an exemption under the extreme hardship and as per the Clause-2 of the aforesaid Policy, one of the major factors for exemption is person suffering from 3rd or 4th stage Cancer and as a Sub-Factor, it also states that it applies to self and to spouse both. The aforesaid Clause-2 of the Policy is reproduced as under:-

“2. Exemption under extreme hardship:-

The officer(s) under this transfer policy (on request by him/her) may be exempted, if they are suffered/disabled as under:-

Sr. No.	Major Factor	Sub-Factor	Explanation
1.	Differently abled persons (Vision, Locomotors, Deaf & Dumb)	Self/Spouse	with 70% disability of officer or his/her spouse supported by medical certificate of Medical Board, may be given their choice of posting.
2.	Diseases of ‘Debilitating Disorders’ i.e. (a) Currently suffering from cancer stage 3 rd and 4 th ; or (b) Having undergone by-pass heart surgery; or (c) Kidney transplant; or (d) Currently undergoing dialysis.	Self/Spouse	Valid medical certificate issued during last one year by AIIMS (Including its branches in Haryana), PGI Rohtak, PGI, Khanpur Kalan, Kalpana Chawla Medical College, Karnal, PGI Chandigarh, Medical College of Haryana Govt. or a Medical Board so constituted.
3.	Mentally challenged Spouse/Child/Children	Spouse/Child/Children	Spouse/Child/Children having mentally challenged or 100% differently abled.



4. Learned Senior Counsel submitted that considering the aforesaid totality of the circumstances and the factual position that the petitioner can always be posted on Non-Public Duty at Kaithal which will be at least near his home place and his family including his wife, who is suffering from last stage of Lung Cancer and who will not be uprooted and considering the aforesaid facts and circumstances and also the Policy of the Nigam itself (Annexure P-16), the impugned orders (Annexure P-3, P-7 & P-11, respectively) may be quashed.

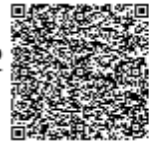
5. On the otherhand, Mr. Samarth Sagar, learned counsel for the respondents submitted that as per the Policy of the Nigam, when an employee has been posted at a particular place for long period of time and especially the petitioner, who had been staying at the same place for a number of years, he has to be transferred as per Clause-6 of the Transfer Policy. He further submitted that the transfer of the petitioner vide Annexure P-3 has been made on administrative basis and the transfer is an incidence of service and therefore, the petitioner cannot claim as a matter of right. He also submitted that the petitioner was caught red handed by the police and an FIR under the Prevention of Corruption Act was also registered against him and he was arrested. Thereafter, the petitioner was suspended and again reinstated by the respondent-Nigam and there was a likelihood that in case the petitioner still remains at the same place at Guhla, District Kaithal where the trial is pending then he may influence the witness although he is already on bail in that FIR.

6. I have heard the learned counsels for the parties.

7. The petitioner is admittedly 70% handicapped and admittedly

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his wife is suffering from last stage of Lung Cancer and is getting treatment from Rajiv Gandhi Hospital, Delhi. The petitioner had been posted at Guhla, District Kaithal for about 8 years and now he has been transferred vide Annexure P-3 to Dhulkot, District Ambala which is stated to be about 60 kms. away from the Kaithal. The petitioner has a house in Guhla, District Kaithal where he stays with his family. Earlier the petitioner was transferred for a number of times and he filed a writ petition before this Court and details regarding the same are in the impugned order dated 22.08.2023 (Annexure P-7). Ordinarily, as per the Policy, if an employee has stayed at a particular place for a long period of time then he has to be transferred but a perusal of another Instructions issued by the respondent-Nigam itself vide Annexure P-16 would show that exceptions have also been carved out in cases of those persons, who are suffering from 3rd and 4th stage of Cancer including the spouse as reproduced above. Therefore, the present case of the petitioner would be covered under the exceptions and not under the general policy. It is true that the transfer is an incidence of service and any employee can be transferred on administrative reasons and there is no vested right of an employee to seek posting of his own choice. However, the aforesaid is not an absolute Rule and is subjected to various exceptions which cannot be put in any straight jacket formula. Every case has to be seen according to its own facts and circumstances. There is no dispute that the petitioner is 70% handicapped and his wife is suffering from last stage of Lung Cancer and they have a house in Guhla, District Kaithal. The reasoning which has been given in the impugned order (Annexure P-7) by the concerned Authority in pursuance of the order passed by this Court that the petitioner has been

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posted far away from that place so that he may not influence any witness of the trial, this Court is of the view that such kind of reasoning is not cogent and logical. The petitioner is already on bail and in case, if he violates any condition of the bail including that of influencing of the witnesses, then he is always at the risk of cancellation of his bail. The aforesaid reasoning of apprehension of influencing the witnesses cannot be transposed on the transfer of the petitioner when the background of the petitioner is that he is not only 70% handicapped but his wife is suffering from the last stage of Lung Cancer. Therefore, the reasoning given by the respondent in the impugned order (Annexure P-7) cannot be sustained.

8. The learned Senior Counsel for the petitioner during the course of arguments has also stated that he has no objection in case the petitioner is posted on a Non-Public Duty place at Kaithal.

9. In view of the aforesaid peculiar facts and circumstances of the case, the present petition is allowed. The impugned order dated 07.07.2023 (Annexure P-3), order dated 22.08.2023 (Annexure P-7) and order dated 06.12.2023 (Annexure P-11) are hereby set aside. The respondent-Nigam is at liberty to pass a fresh order after considering posting the petitioner near his house at Kaithal which may be a Non-Public Dealing Office.

16.05.2024*Bhumika***(JASGURPREET SINGH PURI)**
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |